

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN JAMIE ROETHLISBERGER,

Plaintiff,

- against -

BRIAN RAFFERTY PRODUCTIONS, INC.

Defendant.

Docket No. 1:19-cv-5393

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Brian Jamie Roethlisberger (“Roethlisberger” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Brian Rafferty Productions, Inc. (“Brian Rafferty” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photographs of models, owned and registered by Roethlisberger, a New York based professional photographer. Accordingly, Roethlisberger seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Roethlisberger is a professional photographer in the business of licensing his photographs for a fee having a usual place of business at 689 Myrtle Avenue, 1D, Brooklyn, New York 11205.

6. Upon information and belief, Brian Rafferty is a domestic business corporation duly organized and existing under the laws of the State of New York, with a place of business at 404 West 47th Street, New York, New York 10036. Upon information and belief, Brian Rafferty is registered with the New York Department of State Division of Corporation to do business in the State of New York. At all times material hereto, Brian Rafferty has owned and operated a website at the URL: www.BrianRaffertyProductions.com (the “Website”) and has

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. Roethlisberger photographed models (the “Photographs”). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Roethlisberger is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with United States Copyright Office and were given Copyright Registration Numbers VA 2-142-916, VA 2-142-812 and VA 1-142-839.

B. Defendant’s Infringing Activities

10. Brian Rafferty ran the Photographs on posters for promotions for their events. See Exhibit B.

11. Brian Rafferty did not license the Photographs from Plaintiff for its posters, nor did Brian Rafferty have Plaintiff's permission or consent to publish the Photographs on its posters.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Brian Rafferty infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on its posters. Brian Rafferty is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Brian Rafferty have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF

INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT
(17 U.S.C. § 1202)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Upon information and belief, Brian Rafferty intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photographs.

19. The conduct of Brian Rafferty violates 17 U.S.C. § 1202(b).

20. Upon information and belief, Brian Rafferty's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

21. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Brian Rafferty intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photographs. Brian Rafferty also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photographs.

22. As a result of the wrongful conduct of Brian Rafferty as alleged herein, Plaintiff is entitled to recover from Brian Rafferty the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Brian Rafferty because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

23. Alternatively, Plaintiff may elect to recover from Brian Rafferty statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Brian Rafferty be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Prometheus be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded punitive damages for copyright infringement;
8. That Plaintiff be awarded attorney's fees and costs;
9. That Plaintiff be awarded pre-judgment interest; and

10. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
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LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, NY 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Brian Jamie Roethlisberger